



Janet Napolitano
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Stephen A. Owens
Director

HAZARDOUS AIR POLLUTANTS RULE STAKEHOLDER MEETING SUMMARY

DATE: July 26, 2005
TIME: 6:00 p.m.
LOCATION: El Rio Neighborhood Center
1309 W. Speedway Blvd., Tucson, Arizona

PUBLIC ATTENDEES
(See attached)

ADDITIONAL ATTENDEES
Pat Clymer, Weston Solutions
Theresa Gunn, Gunn Communications

ADEQ STAFF
Steve Burr
Dick Franklin
Sherri Zendri
Mike Fulton

AGENDA

- Opening Remarks
- Introductions and Meeting Overview
- Presentation and Discussion of the State Statute and Work Plan
- Discussion of Stakeholder Issues and Concerns
- Next Steps
- Adjourn

OPENING REMARKS

Richard Grimaldi, Pima County Department of Environmental Quality, thanked attendees for their participation in the Hazardous Air Pollutants (HAPs) rulemaking process. He stated once the rule is adopted by ADEQ, Pima County must adopt the rule within 6 months.

INTRODUCTIONS AND MEETING OVERVIEW

Meeting facilitator Theresa Gunn reviewed the objectives of the meeting and guidelines for holding a good meeting. Based on stakeholder interviews prior to the meeting, she requested that participants consider the process as a new issue, and to leave issues related to the previous HAP rulemaking process in the past.

PRESENTATION AND DISCUSSION OF THE STATE STATUTE AND WORK PLAN

Steve Burr provided a presentation on State HAP Rulemaking including an overview of the Clean Air Act regulatory background, and types of regulatory programs that can be implemented. This

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presentation is available on the ADEQ website at www.azdeq.gov/function/laws/draft.html#haps. Highlights of the presentation included:

- There are two approaches to air regulation – risk management and risk reduction through control technology.
- A.R.S. §49-426.06 authorizes a risk reduction, new source review (NSR), approach modeled on §112(g) of the Clean Air Act.
- This is not a risk management program. It attempts to achieve a reduction of risk through application of control technology.
- Regarding concerns about tracking cancer rates, this is not a program that would undertake an analysis of the cancer risk from individual sources.
- The program applies only to certain new and modified sources of HAP, not to existing source.
- Federal HAPs listed in section 112(b) of Clean Air Act are automatically included.
- ADEQ has authority to list additional HAPs under §49-426.04. ADEQ doesn't plan on adding additional HAPs at this time.
- Sources subject to the program include:
 - All major sources of HAP – defined as a source with the potential to emit (PTE) 10 tons per year (TPY) of a single HAP or 25 TPY of any combination of HAPs.
 - Area (non-major) sources with PTE of 1 TPY of a single HAP or 2.5 TPY of a combination of HAPs, but only if the source belongs to a category listed by ADEQ rule pursuant to §49-426.05.
- The rule would not affect a source seeking to renew a permit.
- Existing sources will only be subject to the program when they undergo a modification, which is defined a change that results in a greater than de minimis emissions increase.
- Major sources are subject to maximum achievable control technology (MACT). These are stringent standards.
- Area sources are subject to hazardous air pollutant reasonable available control technology (HAPRACT), which is essentially a RACT standard.
- Weston Solutions' tasks include:
 - List source categories subject to the program.
 - Identify de minimis amounts for federal HAPs emitted by candidate source categories (draft report prepared).
 - Identify criteria for listing state HAP in a future rulemaking (draft outline prepared).

Stakeholder questions and comments included:

- Don't different toxics have different levels of toxicity? Response: Yes. However, that does not affect the regulatory thresholds. A source must emit at least 1 TPY of a single HAP, regardless of the HAP's relative toxicity.
- Are there other regulatory programs covering HAPs? Response: Yes. EPA has an extensive program regulating mostly the major sources. This state rule focuses primarily on the minor sources.
- Does the potential to emit cover short-term catastrophic releases? Response: No. The catastrophic releases are covered under another regulatory program, section 112(r) of the Clean Air Act.

- How can you exempt existing sources especially those sources that EPA doesn't regulate? Response: The legislature made the decision to exempt existing sources when the statute was drafted.
- How many new sources or modified permits does DEQ issue each year? Response: Not sure, a rough estimate would be 50 permits per year. The State HAP rule may result in permits that otherwise would not have been issued because of the lower thresholds.
- Is this program similar to other states? Response: It appears we are the only state with a control technology type of program.
- Who does the risk assessments for sources to opt out of the program? I am concerned about the ability of DEQ to carefully review studies prepared by consultants to determine whether or not they are technically correct. Sources should not be able to opt out of the rule. Response: We understand the concern, but the opt out is part of the program.

IDENTIFICATION OF STAKEHOLDER ISSUES AND CONCERNS

Theresa Gunn asked the stakeholders to identify their issues and concerns that would need to be addressed during the rulemaking. The issues listed below are verbatim from the cards submitted by the stakeholders.

- The program will have a disproportionate effect (negative) on the low-income, minority communities because that's where the existing sources are.
- What are the administrative costs to small businesses to get a permit and comply with the fees, reporting and inspection requirements?
- When determining adverse effects consider a Title VI review.
- Need to determine how sources will determine/establish a baseline and potential to emit.
- How are baseline emissions and method of operation determined for existing sources, if they are not permitted now? Response: The source will make that determination.
- How will bio-accumulative toxics that are HAPs be regulated? Response: The same as other HAPs.
- Could there be a public comment period on a "risk analysis" before a company is allowed to opt out? Response: Good suggestion.
- Time should be spent changing the statute rather than implementing a rule exempting existing sources and a backdoor exemption for others.
- Doesn't this impose an unfair burden on small sources that can't afford to do a risk assessment to get an exemption?
- I am concerned that HAPs rule will only apply to source categories listed. The incinerator industry regularly reinvents names for themselves to escape public notice and regulation. Why not regulate sources that emit sufficient HAPs, without requiring a list of source categories? Response: The statute requires listing of source categories. We will consider how to account for industry renaming themselves.
- Public notice is required for sources exempt through a RMA
- If an old source in an unpopulated area becomes a populated area could that be considered a "significant source modification"? Response: No.
- Rule must address the issue of existing exposure versus future population exposure in the RMA to exempt a source from HAPRACT.

- 49-426.05 considers “aggregate” effects of sources in a category wouldn’t that require aggregate evaluation in HAPRACT determination? Response: No. Aggregate effects are considered only in deciding to list a source category.
- If a source is exempt from HAPRACT through a RMA do they still need a permit? If so what standards are in the permit? Response: The source may need a permit under other rules or to impose whatever level of control was assumed in the RMA.
- Regarding comment about consultants conducting false RMA modeling for companies so that companies can avoid MACT or HAPRACT. This would be falsifying a report to the agency and if knowing, is a criminal offense.
- Regarding concerns that “existing sources” will not be covered by the rule. Since modification includes any physical change or change in the method of operation nearly all existing sources will be drawn into the program just like NSR. Most companies cannot continue to operate without some sort of modification.
- Childhood leukemia incidence rates are increasing. Childhood brain tumor incidence rates are increasing. Other chronic illnesses like asthma and autism are on the rise. Please implement the safest HAPs rule you possibly can.
- Concern that companies can get around having to add controls by “fudging” a risk management analysis and the ability of ADEQ to review RMAs because of lack of manpower and resources.
- No rule is better than a bad rule.
- Please offer public education how people can prevent exposures to known toxics.
- Statement submitted by Councilmember Steve Leal: It has been increasingly understood that Arizona’s air quality has been deteriorating over time. This has not only created more childhood asthma and other serious respiratory problems but also made working toward a sustainable livable community a dubious goal. Now that we know how to improve standards, we must apply those standards to all existing problem sources, not just new arrivals. In our effort to cultivate economic development, if we were to consider only applying the new and improved air quality measures to new businesses and not existing businesses, we would be creating an unfair playing field for competition. If you think that applying the new measures to all sources is too great a burden, you could consider phasing it in over time but not too much time. The operational status of the standards and/or the state could offer a tax credit.

Stakeholder Concerns Regarding Rulemaking Process

Several stakeholders had concerns and/or suggestions regarding the HAPs rulemaking process. The following is a verbatim list from the cards submitted by the participants.

- Public meetings through direct satellite TV connection. So working community folk can participate without having to travel long distance. Connection can be done without much expense if done through Pima College or UA Telecommunications department.
- Need more notice for meetings and respect for the needs of all stakeholders
- Send out a press release to publicize future meetings
- Need an 800 number to call into the stakeholder meetings
- This HAPs issue needs many true local meetings – in evenings and local area accessible sites.

- We need more meetings in Tucson. With telephone meetings we'd need all documents and presentations online before the meeting.
- Send meeting notices two weeks before meeting. Put notices in newspaper/radio. Put meeting notices in Spanish to Spanish language media.

NEXT STEPS

Gunn reviewed the meeting schedule. The next meeting is scheduled for August 10, 9:30 a.m. at ASU Downtown Center, Phoenix. The purpose of the meeting is to discuss the proposed procedures for Air Quality Dispersion Modeling. A report from Weston Solutions is posted on the website at www.azdeq.gov/function/laws/draft.html#haps.

She also stated three technical workshops on state statute, air dispersion modeling 101 and risk/toxicology 101 were videotaped to provide background information to stakeholders. Information on how to obtain a copy of the workshop DVD will be posted next week on the website.

State Representative Ted Downing stated he would call ADEQ Director Steve Owens to request that additional meetings be held in Tucson. He requested copies of the DVD to be distributed to his office for distribution to local stakeholders.

Burr stated that any additional comments may be e-mailed to him at sb5@azdeg.gov.

ACTION ITEMS

- Deliver 20-25 copies of the workshop DVDs to Representative Downing's office. Coordinate with Jo Grant.
- Determine if the State Assessment of HAPs report can be posted to the website.

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TUCSON STAKEHOLDER MEETING SUMMARY**

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PUBLIC ATTENDEES

Jani Adamson, University of Arizona South
Keith Bagwell, Pima Co. Supervisor Richard Elias Office
Pat Birnie, EJAG
Brian Blank, Environmental Justice
Brad Braun, Tucson Citizen
Ron Brinkman, Air Quality Advisory Committee
Sherry Burt-Kested, Phelps Dodge Sierrita
Mukonde Chama, Pima Co. DEQ
Lee Comrie, Pima Association of Governments
Dennis Correia, Air Quality Advisory Committee
Susan Dickinson, Bombardier Aerospace
Frances Dominquez, Pima Co. DEQ
State Representative Ted Downing
Jerry Dumas, Raytheon
Roger Felty, Malcom Pirnie
Sally Fernandez, Southern Arizona Tech Council
Beth Gorman, Pima Co. DEQ
Robert Grant, Raytheon
Larry Hawke, Pima Co. DEQ
Joy Herr-Cardillo, Arizona Center for Law in the Public Interest
Sharyn Holden, Raytheon
Lynne Hubbard, City of Tucson Environmental Services
Margo Jamez, Gila River Alliance for a Clean Environment
Mike Jones, Triangle Industrial
Myra Jones, Neighborhood Coalition of Greater Tucson
Janelle Kennedy, Arizona Portland Cement
Rob Kulakofsky, Center for Environmental Connections
Steve Leal, Tucson Councilmember Ward 5
Teresa Leal, Southwest Network for Env & Economic Justice
Andrew Madewell, Raytheon
CV Mathais, APS
Linda Miller, Air Quality Advisory Committee
Terry Nordbrock, Families Against Cancer and Toxics (FACT)
John Scheatele, Brush Ceramic Products
Christopher Straub, Pima County Attorney
Wienke Tax, US EPA Region 9
Frank Turkot, Air Quality Advisory Committee
Brittany Varela, Raytheon
Ann Marie Wolf, SERI